United Nations A/72/495

General Assembly

Distr.: General
27 September 2017

Original: English

Seventy-second session
Agenda item 72 (b)
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion and protection of human rights and fundamental freedoms while countering terrorism

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur of the Human Rights Council on the promotion and protection of human rights and fundamental freedoms while countering terrorism Fionnuala Ní Aoláin, submitted in accordance with Assembly resolution 70/148 and Human Rights Council resolution 31/3.

* The present report was submitted after the deadline since the newly appointed Special Rapporteur took office on 1 August 2017.

17-17037 (E) 061017

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Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Summary

The present report is the first annual report submitted to the General Assembly by the newly appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. A brief introduction (sect. I) is followed by a description of the activities of the former and current Special Rapporteurs (sects. II and III). The Special Rapporteur shares several initial thoughts reflecting her priorities and interpretation of the mandate and how she intends to discharge it (sect. IV) and highlights conclusions and recommendations (sect. V). She identifies four substantive areas of interest falling within the mandate: the proliferation of permanent states of emergency and the normalization of exceptional national security powers within ordinary legal systems; the need for greater clarity in respect of the legal relationships between national security regimes and international legal regimes (human rights, international humanitarian law and international criminal law) as well as the relationship of human rights to the emergence of stand-alone international security regimes regulating terrorism and counter-terrorism; the advancement of greater normative attention focused on the gendered dimensions of terrorism and counter-terrorism; and the advancement of the rights and the protection of civil society in the fight against terrorism. In the first instance, the Special Rapporteur will focus particular attention on those issues and will integrate them into the tools available to her in the discharge of her mandate, specifically in future country visits and cooperation with Governments and all pertinent actors, including relevant United Nations bodies.

I. Introduction

1. The present report is the first report submitted to the General Assembly by the newly appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Assembly resolution 70/148 and Human Rights Council resolution 31/3. The report provides several initial thoughts of the Special Rapporteur regarding her interpretation of the mandate and how she intends to discharge it.

2. On 10 July 2017, Fionnuala Ní Aoláin was appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism by the Human Rights Council at its thirty-fifth session; on 1 August 2017, she took office.

3. A report on the work of former Special Rapporteur, Ben Emmerson, undertaken since the submission of his last report to the Human Rights Council (sect. II), is followed by a description of the activities of the Special Rapporteur (sect. III). In section IV, the Special Rapporteur presents a preliminary discussion of her areas of interest in respect of the discharge of her mandate. In section V, she provides conclusions and recommendations.

II. Activities of the former Special Rapporteur

4. The activities of the former Special Rapporteur since the issuance of his final report to the General Assembly (A/71/384) are set forth in his final report to the Human Rights Council (A/HRC/34/61).

5. In addition to the activities described in the report, the former Special Rapporteur undertook three country visits: to Tunisia, from 30 January to 3 February 2017; to Saudi Arabia, from 30 April to 4 May 2017; and to Sri Lanka from 10 to 14 July 2017. He expresses his appreciation to all his interlocutors and officials for the cooperation they extended to him during the visits. Additional official country visits are currently being scheduled. Updated information about the former Special Rapporteur's visits and related requests is available on the website of the Office of the United Nations High Commissioner for Human Rights (www.ohchr.org).

III. Activities of the current Special Rapporteur

6. On 28 July 2017, the Special Rapporteur attended an expert consultation convened by the United Nations Office of Counter-Terrorism in the Palais Wilson, in Geneva. The consultation addressed the issue of ensuring human rights compliance of advance passenger information legislation. The Special Rapporteur provided technical advice on an internal guidance document circulated in advance of the meeting to ensure the compliance of the use, transfer and retention of advance passenger information with international human rights standards. The consultation was also attended by the former mandate holder and the Special Rapporteur on the right to privacy.

7. The Special Rapporteur has identified the countries that she wishes to visit during the course of her mandate and has issued requests to 26 States. Pursuant to paragraph 13 of Human Rights Council resolution 35/34, in her letters, the Special Rapporteur asked the Governments to give serious consideration to responding favourably to those requests. The following countries were addressed: Australia, Belgium, Bangladesh, Bosnia and Herzegovina, China, Colombia, Egypt, France, Honduras, Indonesia, India, Jordan, Kazakhstan, Malaysia, Mali, Mexico, Nigeria,

Pakistan, the Philippines, Qatar, the Russian Federation, Tajikistan, Turkey, the United Arab Emirates, the United States of America and Yemen. At the time of completion of the present report, Mexico, the United States, the United Arab Emirates, the Russian Federation, the Philippines, Indonesia and Malaysia responded by acknowledging receipt of the letter and informing the Special Rapporteur that the request for invitation was under consideration by their respective Governments. Belgium, France, Australia, Kazakhstan, Bosnia and Herzegovina, Tajikistan and Qatar responded favourably. The response from Bangladesh, China, Colombia, Egypt, Honduras, India, Jordan, Mali, Nigeria, Pakistan, Turkey and Yemen is still being awaited.

8. The Special Rapporteur undertook a private (previously arranged) visit to the military commission complex at Guantanamo Bay, Cuba, from 19 to 26 August 2017 in her professional capacity as an academic commentator for Irish media and to advance ongoing research related to her academic work. Given her longstanding interest and expertise in military commissions and criminal process to try persons charged with crimes of terrorism, she was pleased to have the opportunity to observe the 26th pretrial hearing in the joined cases of several Guantanamo Bay detainees.

IV. Preliminary outline areas of interest to the Special Rapporteur

9. The Special Rapporteur pays tribute to the work of her predecessor, Mr. Emmerson. She will build upon his commitment to promote human rights and the rights of victims of terrorism, and to ensure protection against human rights violations while countering terrorism and preventing violent extremism.

10. The Special Rapporteur would like to highlight key areas of interest and concern as she takes up her mandate. She views these areas as interrelated and co-dependent. They include (a) the normalization of exceptional national security powers within ordinary legal systems; (b) greater clarity in respect of relevant legal relationships, specifically as between national security norms and systems and international legal norms and systems (human rights, humanitarian law and international criminal law); (c) greater clarity and transparency on the totality and cohesiveness of normative development related to counter-terrorism norms and practices within the United Nations architecture; (d) integration and prioritization of normative attention to the gendered dimensions of terrorism and counter-terrorism in every aspect of the mandate; and (e) advancement of the rights and protection of civil society and civil space in order to protect that integral component of society if targeted in the guise of the fight against terrorism. For these purposes, the Special Rapporteur will continue the mandate engagement in country visits and cooperation, offering her expertise to Governments and all relevant actors, including relevant United Nations bodies, specialized agencies and programmes, non-governmental organizations and other regional and sub-regional international institutions, as well as victims of terrorism and their families and victims of counter-terrorism.

A. Normalization of national security powers within ordinary legal systems

11. The Special Rapporteur emphasizes that during the period of her tenure, she will focus particular attention on the relationship between the use of exceptional national security and emergency powers and their subsequent permanent absorption into national law and administrative practice. She will give close attention to situations of de facto emergency, complex emergency and permanent emergency,

which are premised on the use of national security and counter-terrorism legislation and administrative process under the domestic law of States.

12. The Special Rapporteur is concerned about the absorption of normally exceptional national security powers and counter-terrorism measures in the ordinary law of many States. In this context, the dividing line between the exercise of exceptional national security powers and the ordinary criminal and civil processes of some States becomes hard to distinguish and the protection of rights becomes increasingly fraught and difficult to provide. Challenges include temporal expansions of national security legislation and counter-terrorism measures beyond the time frame that was used to legally justify their initial invocation and application. In such circumstances, the emergence of permanent states of emergency are seen, where ordinary legal regulation recedes and may be sidelined by the deployment of expansive executive powers, extensions of criminal law to new categories of crime, the primacy of military, security and intelligence institutions over police power within States and sustained limitations on a broad range of rights from assembly to association. All of these institutional practices pose significant challenges to the effective protection of human rights. Moreover, extended use of national security powers can, in particular, negatively affect the enjoyment of rights by vulnerable and minority groups.

13. International human rights law and practice has long recognized, inter alia, that in exceptional situations of war or emergency, States may derogate from certain rights. Human rights treaties also recognize the legitimate exercise of limitations on rights, including to protect public safety. However, derogations from rights are intended to be the exception, not the norm, as indicated by decades of human rights jurisprudence and by the views of States expressed on the function and requirements of derogation.[1]

14. Limitations on rights are not open-ended and are not absolute; they must always be legitimate, proportionate and necessary and must never impair the essence of the right. Human rights treaties require States to remain cognizant of their legal obligation to return to regular legal order within a legally defined period of time. In general, and consistent with the position of the United Nations Human Rights Committee, as articulated in its general comment No. 29,[2] the Special Rapporteur reaffirms that if the same end can be achieved by regular legislation or administrative procedure, as opposed to exceptional legal norms, States should not resort to exceptional national security powers and derogate unnecessarily from the protection of rights and freedoms; rather, they should defer to the capacity of the ordinary legal system to address the challenges at hand. Public posturing and the hasty adoption of new legislation or administrative measures to give the impression of protecting public safety should not be undertaken at the expense of the enjoyment of human rights.

[1] See, for example, European Court of Human Rights, *Lawless v. Ireland, No. 3*, judgment of 1 July 1961, application No. 332/57; see A/36/40, annex VII; see also "The Siracusa Principles on the Limitations and Derogation Provisions in the International Covenant on Civil and Political Rights", *Human Rights Quarterly*, vol. 7, No. 1, (reprinted in February 1985); see also Inter-American Court of Human Rights, OEA/Ser.L/V/II.116. The Special Rapporteur also notes that the practice of derogation by States from their human rights treaty obligations also seems to be in abeyance. Increasingly, the use of ordinary legislation to advance national security powers and practice as well as an apparent unwillingness to invoke the derogation provision of human rights treaties has meant fewer derogations in practice despite extensive use of emergency and national provision powers by States post-9/11.

[2] See Human Rights Committee, general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, art. 4, para. 1, which states, "The restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant".

15. Temporary arrangements have a peculiar tendency to become entrenched over time and thus normalized and made routine. Time-bound emergency legislation is often the subject of future extensions and renewals. The Special Rapporteur notes her concern about the practices whereby legislative or administrative acts that had originally been enacted as temporary emergency or counter-terrorism measures have subsequently been transformed into permanent legislation. On the basis of evidence in practice,[3] the Special Rapporteur recalls that the longer national security legislation — broadly understood — remains on the statute books, the greater the likelihood that extraordinary powers made available to Government under such legislation will become part of the ordinary, normal legal system. The corresponding effect on the enjoyment of human rights is considerable and weakens the capacity of States to maintain effective human rights-compliant anti-terrorism initiatives. The dangers of such pitfalls have been identified by the Global Counter-Terrorism Strategy, which clearly places human rights at the centre of the fight against terrorism and emphasizes that measures taken to counter terrorism must comply with international human rights law (see General Assembly resolution 60/288, annex). Although developed and adopted by States, unfortunately, the Global Counter-Terrorism Strategy remains largely ignored. Emergency regimes should not be normalized unless they are necessary and proportional to the threat faced.

16. The Special Rapporteur underscores the fact that governmental conduct during a crisis creates a precedent for future exigencies as well as for "normalcy". There is a grave danger that where national security powers are piled up, essentially in a constant state of ratcheting powers upwards, Government will take as its starting point the experience of extraordinary powers and authority granted and exercised during previous emergencies rather than judging the needs that arise from new challenges in light of a sober assessment of the capacity of ordinary legal process to cope. Much like the need to gradually increase the dosage of a heavily used medication in order to experience the same level of relief, so too with respect to national security powers: the perception may be that new, more radical powers are needed every time to fight impending crises. In turn, new extraordinary counter-terrorism measures confer an added degree of ex post legitimacy and respectability, as well as a sense of normality, to previously used, less drastic emergency measures. What were deemed exceptional emergency actions in the past may come to be regarded as normal, routine and ordinary in light of more recent and more dramatic counter-terrorism powers. In this context, it also proves highly challenging to adhere in practice to the insights of the Global Counter-Terrorism Strategy, namely, that respect for all human rights for all and the rule of law is the basis of the fight against terrorism and essential to all components of the Strategy (ibid., sect. IV). It is also important to demonstrate in a persuasive manner that the results achieved in terms of public safety by the exceptional or emergency measures taken, at the expense of the erosion of fundamental rights and freedoms, could not have been achieved otherwise (i.e., by implementing existing legislation).

17. The Special Rapporteur will also focus particular attention on the use of emergency and counter-terrorism legislation for purposes other than those for which it was originally promulgated. The "getting used to" phenomenon for long-term counter-terrorism measures may also have a tranquilizing effect on the public's critical approach towards emergency regimes. There are prescient challenges to maintaining a healthy and critical discourse in any society on the need for and use of counter-terrorism measures and corresponding scepticism directed at those who

[3] See E/CN.4/Sub.2/1982/15; see also Subrata Roy Chowdhury, *Rule of Law in a State of Emergency: The Paris Minimum Standards of Human Rights Norms in a State of Emergency*, vol. 4 (London, Pinter Publishers, 1989).

raise concerns about the normalization of exceptional powers with marked effects on the vitality and capacity of civil society.

18. While recognizing the real and undulating pressures faced by States as a result of terrorist acts and by terrorist organizations, the Special Rapporteur affirms the primacy of respecting universal human rights norms in fighting terrorism and in addressing the conditions conducive to terrorism. The protection of human rights is essential to any sustained global strategy to prevent, protect and manage terrorism. Although the pressures brought to bear on States to provide security are real, long-term and sustained security will only be achieved when human rights have a central role in all aspects of the global fight against terrorism.

B. Clarity on the interplay of legal regimes in the counter-terrorism sphere

19. The expansion of institutional and legal counter-terrorism frameworks, policies and practices following the events of 9/11 has been formidable. The normative developments were driven in part by the need to fill exposed lacunae in global counter-terrorism regulation. The United Nations Counter-Terrorism Committee was established by the Security Council in its resolution 1373 (2001) and bolstered by the Council in its resolution 1624 (2005). Noting the obvious, the implementation capacity of the Committee was enabled by the Counter-Terrorism Committee Executive Directorate.

20. In sequence, the Counter-Terrorism Implementation Task Force was established by the Secretary-General in 2005 and endorsed by the General Assembly through the aforementioned United Nations Global Counter-Terrorism Strategy, adopted by State consensus in 2006.[4] The Task Force organized its important work through working groups and a counter-terrorism-related project. Most recently, the Office of Counter-Terrorism of the Secretariat was established by the Assembly in its resolution 71/291 of 15 June 2017 (see also A/71/858). All of these bodies engage a myriad of indispensable regulatory roles.

21. In parallel, the Special Rapporteur underscores that over the past 16 years, a sizable norm creation function has consolidated from the parallel activities of those multiple bodies. The United Nations architecture has sought to respond to an ever-transforming terrorism landscape with sufficient regulatory capacity to address new challenges and threats. However, observers might concur that the pace of response has often outpaced the capacity for full consideration of the overall effects of sustained norm production on the protection and promotion of human rights. Equally, the pace of norm creation in the counter-terrorism sphere creates real challenges relating to norm fragmentation and ineffectiveness.

22. The scale of norm creation is, in the view of the Special Rapporteur, underappreciated. More particularly, the Special Rapporteur voices her concern that insufficient attention has been focused on the specific and global compliance of wide-ranging counter-terrorism regulation across multiple and new spheres with human rights standards in the same period. The production of new counter-terrorism standards, rules and practices through Security Council and General Assembly resolutions, guidance to States, task forces and technical assistance has created a

[4] In the plan of action contained in the annex to the Strategy, Member States resolved to take specific measures to combat terrorism, namely, (a) to address the conditions conducive to the spread of terrorism; (b) to prevent and combat terrorism; (c) to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard; and (d) to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

sizable body of new norms that can be described as an international counter-terrorism regime, one whose full relationship to and interaction with other bodies of legal norms, specifically international human rights and international humanitarian law, is underexplored and is in need of mapping and due consideration for implementation.

23. In parallel with expanded norm development within the United Nations, regional regulatory bodies have not stood still. By way of example, in 2005 the Council of Europe enacted the Convention on the Prevention of Terrorism, complemented by the Guidelines on Human Rights and the Fight Against Terrorism, adopted by the Council's Committee of Ministers. The European Union enacted Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism.[5] Other regional systems have also substantively engaged in counter-terrorism norm production.[6] In short, an explosion of legal norms at various levels of legal capacity have been established since 2001 at the global, regional,[7] national and subnational levels that address counter-terrorism, countering violent extremism and, more recently, preventing violent extremism.

24. The Special Rapporteur affirms the need for a better understanding of the relationship and intersections between these bodies of legal and administrative norms. Mapping intersecting and overlapping legal regimes in the counter-terrorism sphere is not an abstract exercise; rather, it is necessary to understand the full scope of a State's legal obligations and commitments in the counter-terrorism arena, identifying overlap, contradiction and inefficiencies.

25. However, more importantly for the Special Rapporteur is the need to thoroughly map the full terrain of counter-terrorism regulation so as to better engage and understand the full scope of a State's human rights obligations. In this universe of expanding norms, human rights protections run real risks of being marginalized or drowned out by the plethora of new international rules, regulations and obligations. Moreover, there is a lack of clarity concerning the precise legal relationships between different bodies of legal rules, including the application of *lex specialis*, the differentiation between derogable and non-derogable rights in the application of these norms and whether any consideration has been given to existent State human rights obligations in the construction of these norms.

26. The Special Rapporteur also notes her concern about the lack of clarity, in complex situations of internal armed conflict, low-intensity conflict and post-conflict settings, regarding the scope and application of human rights norms in the context of countering terrorism. While affirming that her role is uniquely focused on the protection of human rights in the context of counter-terrorism, the Special Rapporteur recognizes that situations of conflict constitute particular normative challenges to the application of human rights, especially where States advance new

[5] The Directive replaces Council Framework Decision 2002/475/JHA (*Official Journal of the European Communities*, No. L 164, June 2002) and amends Council Decision 2005/671/JHA ("Directive") (ibid., No. L 253, September 2005). It was adopted in response to increased instances of terror attacks in the territories of the member States. Council Framework Decision 2002/475/JHA previously served as the primary legislation on the counter-terrorism initiatives of the European Union. The Directive calls upon member States to criminalize certain acts that may be considered terrorist offenses if committed with the requisite intent and defines offenses related to terrorist activities. In addition, it reviews support mechanisms in place to assist victims of terrorism.

[6] By way of example, the Inter-American Convention against Terrorism, adopted on 2 June 2002, AG/RES. 1840 (XXXII-O/02); the Organization of African Unity Convention on the Prevention and Combating of Terrorism, adopted on 14 July 1999, came into effect on 6 December 2002, and a further Protocol was adopted by the third ordinary session of the African Union in July 2004.

[7] For example, the Southern African Development Community developed a regional counter-terrorism strategy, which was approved by the Community at its thirty-fifth summit, held in August 2015.

interpretation or extensions in the application of international humanitarian law. The Special Rapporteur voices her concern that the complexity of the interface between newly developing counter-terrorism regimes allied with extended interpretation of international humanitarian law may in practice thwart the application of fundamental human rights treaty obligations. This is an area of State practice to which the Special Rapporteur will give close attention.

C. Mainstreaming gender in the discharge of the mandate

27. The Special Rapporteur is deeply committed to fully integrating a sustained and meaningful gender analysis in all aspects of her mandate. Terrorism typically does not discriminate between women and men. The victims of terrorism and those who are harmed by terrorist acts or counter-terrorism policies and practices are equally gendered.

28. Nonetheless, until relatively recently, women have been broadly invisible in terrorism and counter-terrorism discourses. The adoption by the Security Council of its resolution 2242 (2015) has provided some remedy to that imbalance. The resolution explicitly highlights the role of women in countering violent extremism and addresses the impact of the rise of extremism on the lives of women and, more broadly, on women's security, mobility, education, economic activity and opportunities.[8] More broadly, the women, peace and security agenda has sought to highlight the role and significance of conflict and security challenges to women and has been broadly welcomed by States as an important intervention in the peace and security context.

29. However, it remains the case that when women come into view in terrorism and counter-terrorism policy, they typically do so as the wives, daughters, sisters and mothers of terrorist actors, or as the archetypal victims of senseless terrorist acts whose effects on the most vulnerable (women) underscore the unacceptability of terrorist targeting. Women have been marginal to the conversations in which definitions of security are agreed and generally peripheral to the institutional settings in which security frameworks are implemented as policy and law. Women perpetrators of terrorist violence have been largely ignored, although acts of terrorist violence perpetrated by women are increasingly visible, including women as suicide bombers and women exercising leadership roles in terrorist organizations.[9] It is also critical to note that definitions of terror remain highly gendered, with

[8] See Security Council resolution 2242 (2015), paras. 11, 12, 13 and 15. Specifically, in para. 13, the Council highlights the opportunities to engage women. It urges Member States and the United Nations system to ensure the participation and leadership of women and women's organizations in developing strategies to counter terrorism and violent extremism which can be conducive to terrorism, including through countering incitement to commit terrorist acts, creating counter narratives and other appropriate interventions, and building their capacity to do so effectively, and further to address, including by the empowerment of women, youth, religious and cultural leaders, the conditions conducive to the spread of terrorism and violent extremism which can be conducive to terrorism, consistent with the United Nations Global Counter-Terrorism Strategy.

[9] For example, regarding Boko Haram's use of female suicide bombers, see, Jason Warner and Hilary Matfess, "Exploding stereotypes: the unexpected operational and demographic characteristics of Boko Haram's suicide bombers" (Combating Terrorism Centre at West Point, 2017). According to the authors, from 11 April 2011 to 30 June 2017, Boko Haram deployed 434 bombers to 247 different targets during 238 suicide-bombing attacks. At least 56 per cent of the bombers were women, and at least 81 bombers were specifically identified as children or teenagers. In terms of global numbers, recent academic studies (see, for example, Jessica Davis, "Evolution of the global jihad: female suicide bombers in Iraq, *Studies in Conflict & Terrorism*, vol. 36, No. 4 (2013)) indicate that in the 256 records of attacks conducted by women from 1968 to 2012, 157 involved suicide attacks with detonation.

deliberate acts of sexual violence perpetrated by terrorist organizations as a method and means of terrorism going unrecognized under domestic legislation. This means in practice that those victims of terrorism are ignored, stigmatized, marginalized and excluded from the redress and support recognized as vital for victims of terrorism.[10]

30. While the Security Council, in resolution 2242 (2015), requested the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate to integrate gender as a cross-cutting issue throughout the activities within their mandate,[11] the integration of women into national security planning, priority and execution remains highly patchy at the national and international levels. However, those exclusions are already being addressed, including by the Secretary-General's Plan of Action to Prevent Violent Extremism, which tackles the importance of gender, in particular in the context of violent extremism, including women in counter-terrorism activities, building women's civil society capacity so that they can act as barriers to violent extremism and setting aside funds to empower women as a place holder for broader economic, social and political reforms in marginal communities that are at risk of producing terrorists.[12] Noting that sustained lack of integration, the Special Rapporteur will consistently address such matters during the course of her mandate, including during country visits.

31. However, the focus on women is only one aspect of integrating a gender perspective into the work of the mandate holder. In addition to greater integration of women's capacity and experience into the substantive work of counter-terrorism, a sustained focus on men is needed to ensure full engagement with the gender dimensions of terrorism and counter-terrorism. Concentration on male actors has dominated national security conversations and as a result the "causes" of terrorism are often coded male with little reflection on the gendered contexts, practices and intersections that give profound insight into the conditions that produce and sustain terrorism. For example, there is increasing awareness, in the context of countering violent extremism, that recruitment to terrorist organizations is premised on ideas of male identity and power, including unfettered access to women based on institutionalized gender inequality and women's subordination. In order to prevent violent extremism effectively there is no avoiding the masculinity tropes that attract men on the basis of a certain form of male identity and power.

32. The Special Rapporteur notes that men, maleness and masculinities as a category of analysis is missing in the ways terrorist acts, terrorist organizations and anti-terrorism responses are understood. In order to fully integrate a gender

[10] The Security Council has expressly condemned the use of sexual violence, early and forced marriage, rape, sexual slavery and the increased use of girls as suicide bombers by organizations such as Boko Haram. See, for example, Security Council resolution 2349 (2017). See also, S/2017/249.

[11] Specifically, in para. 11, the Security Council calls for the greater integration by Member States and the United Nations of their agendas on women, peace and security, counter-terrorism and countering violent extremism which can be conducive to terrorism, requests the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate to integrate gender as a cross-cutting issue throughout the activities within their respective mandates, including within country-specific assessments and reports, recommendations made to Member States, facilitating technical assistance to Member States, and briefings to the Council, encourages the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate to hold further consultations with women and women's organizations to help inform their work, and further encourages the Counter-Terrorism Implementation Task Force to take the same approach in activities within its mandate".

[12] Noting the contrast between earlier work, see, for example, Counter-Terrorism Implementation Task Force, "First report of the Working Group on Radicalization and Extremism that Lead to Terrorism: inventory of State programmes" (2006), which did not directly address women and girls, and more recent efforts by the Counter-Terrorism Implementation Task Force inter-agency working groups, which include UN-Women and gender expertise.

perspective into the work of the mandate, attention to gender identity, practice and the gender order of terrorism and counter-terrorism will be a necessary part of the work of the Special Rapporteur. In this regard, the attention of the Special Rapporteur will be focused on the good practice already under way within the United Nations architecture, advancing a more holistic understanding of the importance of gender in the areas of countering and preventing violent extremism, with emphasis on why and how certain kinds of masculinity strongly correlate with radicalization and the capacity for violent mobilization, and how best to address such understandings in programming and thinking about the prevention of terrorism.

D. Protecting and promoting civic space and civil society while countering terrorism

33. Building on the work of her predecessor, the Special Rapporteur underscores the value of a healthy, diverse and well-resourced civil society in any country, in particular in countries facing the threat and reality of terrorism. As the General Assembly noted in the United Nations Global Counter-Terrorism Strategy, effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing. In advancing the promotion and protection of human rights in any society, civil society is a necessary and much needed infrastructure. It can pave the way for more effective prevention strategies, with regard to both the temptation to resort to terrorist action and the attraction of radical or violent extremism. The Special Rapporteur affirms the value of civic space, public participation and critical engagement by civil society as an essential part of a human rights-informed approach to counter-terrorism. The value of the rights to association, assembly and expression is a key element of the human rights treaty architecture. Those rights have intrinsic value and promote the functionality of societies in which the dignity and equality of every human being is advanced. The Special Rapporteur notes her attentiveness to undue restrictions on civil society in the name of security and counter-terrorism. She will remain deeply engaged with both Governments and civil society in the discharge of her mandate.

V. Conclusions

34. **In concluding the present preliminary first report, the Special Rapporteur recognizes that her mandate starts at a highly significant time, with the instigation of urgent institutional reform and the initiatives of the Secretary-General to engage comprehensive reform of the Organization's counter-terrorism strategy and architecture.**

35. **As the previous mandate holder noted in his final report, the mandate of the Special Rapporteur is the only one within the United Nations that is explicitly and exclusively dedicated to the protection and promotion of human rights while countering terrorism. The Commission on Human Rights established the mandate in its resolution 2005/80. It was then assumed by the Human Rights Council and was extended in 2016 by Council resolution 31/3 for a further three years. Given the breadth of the mandate and the responsibility under it to consider all human rights that might be affected by counter-terrorism measures, its sources and capacity are relatively meagre in institutional terms. The limitations of the mandate's institutional capacity have been set out in detail by her predecessor and the Special Rapporteur will not revisit them here. However, the adoption, mainstreaming and resourcing of an integrated human rights infrastructure in countering terrorism is an urgent priority in the restructuring endeavour. In conclusion, the Special Rapporteur**

underscores the fact that she looks forward to the work ahead and, in particular, to sustained engagement in the institutional revisions that follow from a shared commitment to enhance the capacity of the United Nations to advance human rights as an integral component of collective and individual security.